



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 210325-0070]

RIN 0648-BJ93

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Regulatory Amendment 34

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is implementing management measures described in Regulatory Amendment 34 to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). The final rule will create 34 special management zones (SMZs) around artificial reefs in the exclusive economic zone (EEZ) off North Carolina and South Carolina. The purpose of the final rule is to designate new SMZs and to restrict fishing gear with greater potential to result in high exploitation rates. The restrictions are expected to reduce potentially adverse effects to snapper-grouper species and enhance recreational fishing opportunities at these SMZs.

DATES: The final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Electronic copies of Regulatory Amendment 34 to the Snapper-Grouper FMP (Regulatory Amendment 34) may be obtained from *www.regulations.gov* or from the NMFS Southeast Regional Office website at *<https://www.fisheries.noaa.gov/action/regulatory-amendment-34-special-management-zones-smz>*. Regulatory Amendment 34 includes an environmental assessment, regulatory impact review, and Regulatory Flexibility Analysis (RFA).

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: *rick.devictor@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the snapper-grouper fishery under the Snapper-Grouper FMP. The Snapper-Grouper FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*).

On November 16, 2020, NMFS published the proposed rule for Regulatory Amendment 34 in the **Federal Register** and requested public comment (85 FR 73013). Regulatory Amendment 34 and the proposed rule outline the rationale for the actions contained in this final rule. A summary of

the management measure described in Regulatory Amendment 34 and implemented by this final rule is described below.

Background

The purpose of the Council's SMZ designation process and the subsequent specification of SMZs is to protect snapper-grouper populations at the relatively small artificial reef sites in the EEZ and to create fishing opportunities that would not otherwise exist without their designation. Prior to the SMZ designation process established by the Council in 1983, for example, black sea bass pots were used by commercial fishermen to efficiently remove black sea bass from artificial reefs off South Carolina. At the time of the SMZ designation process, the Council determined that because artificial reef sites are small in area due to the limited amount of suitable reef-building material, the sites are vulnerable to overexploitation by more efficient fishing gear that has the potential to result in localized depletion. In addition, the Council wanted to enhance fishing opportunities for the recreational sector through the designation of SMZs. The Council has determined that the harvest and gear restrictions will increase the abundance and size of snapper-grouper species at the sites, thereby increasing available catch for fishermen, such as those fishing under recreational harvest limits.

The North Carolina Division of Marine Fisheries (NCDMF) and the South Carolina Department of Natural Resources (SCDNR) requested that the Council designate artificial reefs located in the EEZ off their respective coasts as SMZs. Following a review of the requests, the Council developed Regulatory Amendment 34 that would create 34 new SMZs - 30 off North Carolina and 4 off South Carolina. The Council determined that the actions in Regulatory Amendment 34 will enhance the fishing experience at the artificial reef sites for recreational fishermen and that will further promote the original intent of North Carolina and South Carolina for placing the artificial reefs at the sites. The purpose of Regulatory Amendment 34 and this final rule is to designate these sites as SMZs and to restrict fishing gear that could result in high exploitation rates to reduce potential adverse biological effects to federally managed snapper-grouper species and enhance recreational fishing opportunities at these sites.

Management Measures Contained in this Final Rule

This final rule creates SMZs in the EEZ off North Carolina and South Carolina. Authorized gear and harvest levels for snapper-grouper species at these new SMZs are also specified by this final rule to reduce potentially adverse biological effects to snapper-grouper species and enhance recreational fishing opportunities.

SMZs off North Carolina

This final rule designates 30 SMZs off North Carolina in the EEZ. The 30 sites are existing artificial reefs permitted by the Army Corps of Engineers. The SMZs match the sizes of the permitted artificial reefs, and range in size from 0.24 to 0.76 square nautical miles or 0.25 to 1.01 square miles (0.82 to 2.6 square km). This final rule establishes that all harvest of snapper-grouper species is allowed only with handline, rod and reel, and spear within the SMZs. Further, in the SMZs off North Carolina, all commercial and recreational harvest of snapper-grouper species by spear is limited to the applicable, existing recreational bag limits, as requested by the NCDMF.

SMZs off South Carolina

This final rule designates four SMZs, in addition to the existing 28 SMZs, off the coast of South Carolina in the EEZ. The four sites are existing artificial reefs permitted by the Army Corps of Engineers. The SMZs match the sizes of the permitted artificial reefs, and range in size from 0.031 to 0.25 square nautical miles or 0.041 to 0.33 square miles (0.11 to 0.86 square km). This final rule establishes that all harvest of snapper-grouper species is allowed only with handline, rod and reel, and spear within the SMZs. Further, in the SMZs off South Carolina, all commercial and recreational harvest of snapper-grouper species is limited to the applicable, existing recreational bag limits, as requested by the SCDNR. These restrictions

match the regulations in the current SMZs off South Carolina.

Comments and Responses

NMFS received 10 comments during the public comment period on the proposed rule for Regulatory Amendment 34. Most comments were in support of the creation of SMZs at the artificial reef sites. NMFS acknowledges the comments in favor of the action in the proposed rule and agrees with them. Some comments were outside the scope of the proposed rule and Regulatory Amendment 34 and are not responded to in this final rule. Comments that opposed or requested additional information about the actions contained in Regulatory Amendment 34 and the proposed rule are summarized below, along with NMFS' responses.

Comment 1: Prohibiting commercial fishermen from taking more than the recreational bag and possession limits of South Atlantic snapper-grouper from the SMZs in this final rule where fish are attracted and congregating will only decrease the efficiency of the commercial fishermen's efforts. This is contrary to what the Fishing Enhancement Act describes in 33 U.S.C. 2101(a)(5) as what properly managed reefs can do. Without violating the intent of the National Fishing Enhancement Act (Act) of 1984, explain how NMFS can convert the artificial reefs that are in Federal waters into SMZs where only recreational harvest is allowed when this is clearly contrary to proper management outlined

in 33 U.S.C. 2101(a)(5). Further, NMFS is violating the artificial reef standards written in 33 U.S.C. 2102(2) by effectively excluding commercial fishing from federally permitted artificial reefs.

Response: NMFS does not agree that the final rule will violate the intent of the Act by only allowing recreational harvest levels at the SMZ sites in this final rule. The purpose of the Act is to promote and facilitate responsible and effective efforts to establish artificial reefs. The Act further states that properly designed artificial reefs can enhance the habitat and diversity of fishery resources; enhance United States recreational and commercial fishing opportunities; increase the production of fishery products in the United States; increase the energy efficiency of recreational and commercial fisheries; and contribute to the United States and coastal economies.

The final rule conforms with the intent of the Act. The final rule does not prohibit harvest by commercial fishermen, and will allow both commercial and recreational fishing with handline, rod and reel, and spear in the SMZs. The purpose of this final rule is to restrict the use of fishing gear with a greater potential to result in high exploitation rates to reduce potentially adverse effects to federally managed snapper-grouper species at these sites. The Council determined that the actions will enhance the fishing experience at the artificial reefs for recreational

fishermen and that optimizing opportunities for recreational fishermen was the original intent of the artificial reef placement at these sites.

Comment 2: Explain if the gear requirements in this final rule allow electric fishing reels, such as the Tanacom 1000.

Response: Allowable gear for the harvest of South Atlantic snapper-grouper at the SMZ sites in this final rule off North Carolina and South Carolina includes rod and reel, and the use of electric-powered reels, such as the Tanacom 1000.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Regulatory Amendment 34, the Snapper-Grouper FMP, the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting or recordkeeping compliance requirements are introduced in this final rule. This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments from the public were received regarding this certification. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Grouper, Snapper, South Atlantic.

Dated: March 26, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND
SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.182, add paragraphs (e) and (f) to read as follows:

§ 622.182 Gear-restricted areas.

* * * * *

(e) *SMZs off North Carolina.* (1) The center of each SMZ in Table 3 to this paragraph (e) is located at the given point with a radius extending the applicable distance in every direction laterally from that point to form a circle around the center point.

(2) Harvest of South Atlantic snapper-grouper while in the SMZs in this paragraph (e) is permitted only by handline, rod and reel, and spearfishing gear. All harvest of South Atlantic snapper-grouper by spearfishing gear in the SMZs in this paragraph (e) is limited to the applicable recreational bag and possession limits in § 622.187.

Table 3 to paragraph (e)

Reef name	North lat.	West long.	Radius in ft (m)
AR-130	36°00.296'	75°31.957'	1,500 (457)
AR-140	35°56.718'	75°31.965'	1,500 (457)
AR-145	35°54.017'	75°23.883'	1,500 (457)
AR-220	35°08.117'	75°40.633'	3,000 (914)
AR-225	35°06.768'	75°39.322'	1,500 (457)
AR-230	35°06.133'	75°42.933'	1,500 (457)
AR-250	34°56.900'	75°54.860'	1,500 (457)
AR-255	34°55.483'	75°57.910'	1,500 (457)
AR-285	34°33.383'	76°26.350'	1,500 (457)
AR-300	34°18.517'	76°24.133'	1,500 (457)

AR-302	34°10.265'	76°13.703'	1,500 (457)
AR-305	34°16.683'	76°38.650'	1,500 (457)
AR-330	34°33.634'	76°51.267'	3,000 (914)
AR-340	34°34.319'	76°58.345'	1,500 (457)
AR-345	34°32.266'	76°58.508'	1,500 (457)
AR-355	34°21.318'	77°19.877'	1,500 (457)
AR-362	34°15.657'	77°30.392'	1,500 (457)
AR-366	34°12.950'	77°25.250'	1,500 (457)
AR-368	34°09.514'	77°25.782'	1,500 (457)
AR-372	34°06.295'	77°44.917'	1,500 (457)
AR-376	34°03.283'	77°39.633'	1,500 (457)
AR-382	33°58.581'	77°41.172'	1,500 (457)
AR-386	33°57.517'	77°33.400'	1,500 (457)
AR-400	33°29.267'	77°35.227'	1,500 (457)
AR-420	33°51.050'	78°06.710'	1,500 (457)
AR-440	33°49.800'	78°13.083'	1,500 (457)
AR-445	33°44.783'	78°14.100'	1,500 (457)
AR-455	33°47.033'	78°17.883'	1,500 (457)
AR-460	33°50.089'	78°22.022'	1,500 (457)
AR-465	33°23.423'	78°11.052'	1,500 (457)

(f) *Additional SMZs off South Carolina.* (1) The center of each SMZ in Table 4 to this paragraph (f) is located at the given point with a radius extending the applicable distance in every direction laterally from that point to form a circle around the center point.

(2) Harvest of South Atlantic snapper-grouper while in the SMZs in this paragraph (f) is permitted only by handline, rod and reel, and spearfishing gear (excludes a

powerhead). All harvest of South Atlantic snapper-grouper by the allowable gear in the SMZs in this paragraph (f) is limited to the applicable recreational bag and possession limits in § 622.187.

(3) *PA-04 - Ron McManus Memorial Reef*. This SMZ is bounded by lines connecting the following corner points:
northwest corner point at 33°46.400' N, 78°36.200' W;
northeast corner point at 33°46.400' N, 78°35.600' W;
southeast corner point at 33°45.900' N, 78°35.600' W; and
southwest corner point at 33°45.900' N, 78°36.200' W.

Table 4 to paragraph (f)

Reef name	North lat.	West long.	Radius in ft (m)
PA-07 Pop Nash	33°34.510'	78°51.000'	600 (183)
PA-28 Lowcountry Anglers	32°34.300'	79°55.100'	600 (183)
PA-34 CCA- McClellanville	32°51.800'	79°22.500'	600 (183)